

BILL LOCKYER, Attorney General
of the State of California
SAMUEL K. HAMMOND, State Bar No. 141135
Deputy Attorney General
California Department of Justice
110 West "A" Street, Suite 1100
San Diego, CA 92101

P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2083
Facsimile: (619) 645-2061

Attorneys for Complainant

**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

JOHN P. SANDERS
P.O. Box 628
Murrieta, CA 92564

Respiratory Care Practitioner License No. 21339

Respondent.

Case No. R-2034

OAH No.

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about June 28, 2006, Complainant Stephanie Nunez, in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs, filed Accusation No. R-2034 against JOHN P. SANDERS (Respondent) before the Respiratory Care Board.

2. On or about February 18, 2000, the Respiratory Care Board (Board) issued Respiratory Care Practitioner License No. 21339 to Respondent. The Respiratory Care Practitioner License is current with an inactive status and will expire on October 31, 2007, unless renewed.

///

///

1 3. On or about June 28, 2006, Jennifer Porcalla, an employee of the
2 Complainant Agency, served by Certified and First Class Mail a true and correct copy of the
3 Accusation No. R-2034, Statement to Respondent, Notice of Defense, Request for Discovery,
4 and Government Code sections 11507.5, 11507.6, and 11507.7 at his address of record on file
5 with the Board, which was and is P.O. Box 628, Murrieta, CA 92564. A copy of the Accusation,
6 accompanying documents, and Declaration of Service are attached as Exhibit A, and are
7 incorporated by reference as if fully set forth herein.

8 4. Service of the Accusation was effective as a matter of law under the
9 provisions of Government Code section 11505, subdivision (c).

10 5. On or about July 19, 2006, the green receipt card was received by the
11 Board from the U.S. Postal Service. The green card was signed indicating receipt of the above-
12 mentioned documents mailed to Respondent at his address of record. A copy of the postal
13 returned documents are attached hereto as Exhibit B, and are incorporated by reference as if fully
14 set forth herein.

15 6. Business and Professions Code section 118 states, in pertinent part:

16 "(b) The suspension, expiration, or forfeiture by operation of law of a license
17 issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the
18 board or by order of a court of law, or its surrender without the written consent of the board,
19 shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive
20 the board of its authority to institute or continue a disciplinary proceeding against the licensee
21 upon any ground provided by law or to enter an order suspending or revoking the license or
22 otherwise taking disciplinary action against the license on any such ground."

23 7. Government Code section 11506 states, in pertinent part:

24 "(a) Within 15 days after service of the accusation the respondent may
25 file with the agency a notice of defense in which the respondent may:

26 “(1) Request a hearing.

27 “...”

28 ///

“(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.”

8. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. R-2034.

9. California Government Code section 11520 states, in pertinent part:

"(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent."

10. Pursuant to its authority under Government Code section 11520, the Board hereby finds Respondent is in default. Accordingly, the Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it, contained in Exhibits A and B finds that the allegations in Accusation No. R-2034 are true.

11. The Respiratory Care Board further finds that pursuant to Business and Professions Code section 3753.5, the costs of investigation and enforcement of the case prayed for in the Accusation total \$391.00.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent JOHN P. SANDERS has subjected his Respiratory Care Practitioner License No. 21339 to discipline.

2. A copy of the Accusation and accompanying documents and Declaration of Service are attached.

3. The agency has jurisdiction to adjudicate this case by default.

///

4. The Respiratory Care Board is authorized to revoke Respondent's

1 Respiratory Care Practitioner License based upon the following violations alleged in the
2 Accusation:

3 a. Business and Professions Code section 3750.5(a) [obtaining or
4 possessing a controlled substance];

5 b. Business and Professions Code section 3750.5(b) [use of a
6 Controlled Substance]; and

7 c. Business and Professions Code section 3750(g) [violating
8 provisions of respiratory care practice act].

9 5. Respondent is hereby ordered to pay the above costs of investigation and
10 enforcement of this action.

11 ORDER

12 IT IS SO ORDERED that Respiratory Care Practitioner License No. 21339,
13 heretofore issued to Respondent JOHN P. SANDERS, is revoked.

14 Respondent is ordered to reimburse the Respiratory Care Board the amount of
15 \$391.00 for its investigative and enforcement costs. The filing of bankruptcy by Respondent shall
16 not relieve Respondent of his responsibility to reimburse the Board for its costs. Respondent's
17 Respiratory Care Practitioner License may not be renewed or reinstated unless all costs ordered
18 under Business and Professions Code section 3753.5 have been paid.

19 Pursuant to Government Code section 11520, subdivision (c), Respondent may
20 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
21 within seven (7) days after service of the Decision on Respondent. The agency in its discretion
22 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
23 statute.

24 ///

25 ///

26 ///

27 ///

This Decision shall become effective on November 20, 2006.

It is so ORDERED October 19, 2006.

Original signed by:

LARRY L. RENNER, BS, RRT, RCP, RPFT
PRESIDENT, RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS

Attachments:

Exhibit A: Accusation No.R-2034, Related Documents, and Declaration of Service
Exhibit B: Green Postal Receipt Card